



Employees' Retirement Board of Rhode Island
Monthly Meeting Minutes
Wednesday, June 13, 2012
9:00 a.m.
2nd Floor Conference Room, 50 Service Avenue

The Monthly Meeting of the Retirement Board was called to order at 9:07 a.m. Wednesday, June 13, 2012, in the 2nd Floor Conference Room, 50 Service Avenue, Warwick, RI.

I. Roll Call of Members

The following members were present at roll call: General Treasurer Gina M. Raimondo; Vice Chair William B. Finelli; Gary R. Alger, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; Roger P. Boudreau; Michael R. Boyce; M. Carl Heintzelman; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Louis M. Prata and Jean Rondeau.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director; Attorney Michael P. Robinson, Board Counsel.

Recognizing a quorum, Treasurer Raimondo called the meeting to order.

II. Approval of Minutes

On a motion by Frank R. Benell, Jr., and seconded by M. Carl Heintzelman, it was unanimously

VOTED: To approve the draft minutes of the May 9, 2012 meeting of the Employees' Retirement System of Rhode Island Board.

III. Chairperson's Report

Treasurer Raimondo provided the Board an update on investments. She said the April year to date return was 6.59% and total assets under management were \$7.4 billion. The Treasurer also said that the volatility of the portfolio is substantially lower than it was a year ago and below ERSRI's benchmark.

Treasurer Raimondo then asked Deputy Treasurer Attorney Mark Dingley to provide an update to the Board on the Defined Contribution plan. Attorney Dingley said the implementation is on schedule for the first payroll period in July. Attorney Dingley also noted that TIAA-CREF has heard from and received input from all of the 157 different payroll administrators which is a positive to keeping on schedule.

Mr. Prata asked where member addresses are retrieved from; he noted that some members had not received TIAA-CREF information. Attorney Dingley said that TIAA-CREF received member addresses from ERSRI. However, Attorney Dingley said if members have moved and have not updated their address with ERSRI it is likely that the information may have been returned to TIAA-CREF. Attorney Dingley said there have been about 1,500 returned member transition guides. He told the Board that the

affected employers (via their payroll administrators) have been provided with the names of the returned mail and asked that they reach out to those members. Additionally, he said all payroll administrators have been contacted and asked to notify their employees that if they have not received any information from TIAA-CREF by this point to contact them directly (contact information for TIAA-CREF was provided to employers).

Director Karpinski supported Attorney Dingley's explanation saying that ERSRI receives the member's address from the wage and contribution payroll file upon initial enrollment only, subsequent changes must be made by the member through either hardcopy or the ERSRI website.

The Treasurer acknowledged appreciation for the efforts of Andrew Raucci, Attorney Mark Dingley and Director Frank Karpinski on integrating the 157 payrolls.

IV. Executive Director's Report

Director Karpinski apprised the Board that they are in possession of draft copies of proposed regulations *No.14.2—Concerning the Interpretation of the Definition for Average Compensation under §36-8-1(5)(B)*; *No. 15 concerning the Designation of “Pay-Go” Judges Contributions as 414(h)(2) contributions and an adoption of trust agreement effective July 1, 2012*, and a *Declaration of Trust for the “Pay-Go” Judges Contributions*. The Director also apprised the Board that they were in possession of a revised Teachers Post-Retirement report for the 11-12 school year, the Pension Application Report and an email and letter regarding the hearing scheduled for *Ann Capineri vs. ERSRI* with a request by her counsel for a continuance.

Director Karpinski told the Board that the Rules and Regulations Subcommittee met on May 17, 2012 to consider proposed regulations related to the Rhode Island Retirement Security Act of 2011 (RIRSA) and a methodology for developing an indemnity rule related to fiduciary liability insurance. He said the committee met this morning to consider a designation of “Pay-Go” Judges contributions as 414(h)(2) contributions and adoption of trust agreement effective July 1, 2012. The Director said Mr. Maguire, Chair of the Subcommittee, will update the Board during committee reports.

Director Karpinski then updated the Board regarding the SRA Plus option a.k.a. the Social Security Option. He said he and Roger Boudreau met with Joe Newton (via video conference) to review the March 27, 2012 letter provided to the Board regarding the SRA Plus option (Social Security Option). The Director said they discussed possible scenarios (actuarially based) to reduce the ages when members could receive the down date adjustment (i.e. the actuarial reduction) earlier than age 62. Director Karpinski said that GRS will prepare an analysis to determine possible ages and associated reductions for review and the information will then be presented to the legislative subcommittee for consideration.

V. Administrative Decisions

Disability Appeal –Edward J. Young vs. ERSRI

Included in the board books, under separate cover, were the Findings of Fact as concluded by the Disability Subcommittee, transcripts from the appeal to the Disability Subcommittee and from the May 9, 2012 regular board meeting, medical and

supporting information for the matter of *Edward J. Young vs. ERSRI*. Attorney Robinson asked if consistent with Regulation Number 9, *Rules pertaining to the application to receive an Ordinary or Accidental Disability Pension*, there were any written briefs, legal memoranda, or exceptions to the conclusions and recommendation of the Disability Subcommittee which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board that there was additional information provided from the appellant's attorney and the Board has been provided with a copy.

Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement Board. Consistent with the Board's long standing policy, he apprised the appellant that this is not an opportunity to present new factual material or evidence to the Board. He said the Board affords deference to the conclusions of its Disability Subcommittee on factual determinations and questions of credibility and will not overturn those determinations and assessments unless they are found to be clearly wrong. Attorney Robinson apprised the Board that Mr. Young was being represented by Attorney Mark P. Gagliardi.

Attorney Robinson then provided a synopsis of the *Edward J. Young vs. ERSRI* matter and the appellant was sworn in. There being a stenographer present, the parties presented their cases. John J. Meehan recused himself from the *Edward J. Young vs. ERSRI* matter.

At the conclusion of the hearing a motion was made by Michael R. Boyce and seconded by Roger P. Boudreau to overturn the decision of Disability Subcommittee and award Mr. Young disability benefits. A roll call was taken. The following members voted Yea: William B. Finelli; Roger P. Boudreau; Michael R. Boyce; John P. Maguire and Louis M. Prata. The following members voted Nay: General Treasurer Gina M. Raimondo; Gary R. Alger, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; M. Carl Heintzelman; Thomas A. Mullaney and Jean Rondeau.

There being 12 votes cast, 5 voted in the affirmative, and 7 nay, consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there not being a majority vote of the members present and voting at which a quorum is present, the motion failed.

Attorney Robinson then said that if desired by the Board, a motion would be in order to affirm the recommendations and the findings of fact of the Disability Subcommittee. A motion was then made by Jean Rondeau and seconded by Thomas A. Mullaney to affirm and adopt the findings of fact and the recommendation of the Disability Subcommittee to deny Mr. Young's application for disability benefits. The following members voted Yea: General Treasurer Gina M. Raimondo; Gary R. Alger, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; M. Carl Heintzelman; Thomas A. Mullaney and Jean Rondeau. The following voted Nay: William B. Finelli; Roger P. Boudreau; Michael R. Boyce; John P. Maguire and Louis M. Prata.

There being 12 votes cast, 7 voted in the affirmative, and 5 nay, consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there being a majority vote of the members present and voting at which a quorum is present, it was then

VOTED: To affirm and adopt the findings of fact and the recommendation of the Disability Subcommittee to deny the application for disability benefits in the matter of *Edward J. Young vs. ERSRI*.

Administrative Appeal –Ann N. Capineri vs. ERSRI

The Board being in possession of an email and letter with a request by Ms. Capineri's legal counsel for a continuance, considered the request. On a motion by John P. Maguire and seconded by Roger P. Boudreau, it was unanimously

VOTED: To grant a continuance for the matter of *Ann N. Capineri vs. ERSRI*.

Administrative Appeal – Barbara Hurst, Paula Rosin and Janice Weisfeld vs. ERSRI

Attorney Robinson apprised the Board of a communication with Attorney Joseph Penza who represents the three appellants; namely, Barbara Hurst, Paula Rosin, and Janice Weisfeld, who were not present at the hearing. Attorney Robinson said that Attorney Penza confirmed that he received proper notice of today's hearing and he was familiar with the underlying proceedings of the case. Attorney Robinson advised the Board that Attorney Penza had indicated that he had notified his clients of this morning's hearing and received no response from them, and that he therefore had no objection to the matter proceeding in his absence and in the absence of his clients. Attorney Robinson advised that Attorney Penza had indicated that he would not be appearing at the hearing, and that his clients had been fully notified of the hearing.

Attorney Robinson recommended the Board, in the absence of a request for a continuance, proceed and consider the matter in the absence of the petitioners and their counsel. On a motion by John P. Maguire and seconded by Roger P. Boudreau, it was unanimously

VOTED: To proceed with the administrative appeal of *Barbara Hurst, Paula Rosin and Janice Weisfeld vs. ERSRI* in absence of the appellants and their legal counsel.

Included in Board Members' Books was the Hearing Officer's written decision, along with exhibits and supporting information in the matter of *Barbara Hurst, Paula Rosin and Janice Weisfeld vs. ERSRI*. Attorney Robinson asked if consistent with Regulation Number 4, Rules of Practice and Procedure for Hearings, there were any written briefs, legal memoranda, or exceptions to the decision of the Hearing Officer which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board that there had been no additional documents submitted pursuant to Regulation No. 4. Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement Board.

Attorney Robinson then provided a synopsis of the matter. There being a stenographer present, Attorney Robinson presented ERSRI's position. At the conclusion of the hearing a motion was made by John P. Maguire and seconded by Thomas A. Mullaney and M. Carl Heintzelman to affirm and adopt the findings of fact and recommendations of the Hearing Officer to deny the purchase of service credits. It was then unanimously

VOTED: To uphold the decision of the Hearing Officer to deny the Petitioner's request for purchase of service credit.

VI. Approval of the May Pensions as Presented by ERSRI

On a motion by Jean Rondeau and seconded by Roger P. Boudreau., it was unanimously

VOTED: To approve the May pensions as presented.

VII. Legal Counsel Report

Attorney Robinson apprised the Board on the matter of *Brian Sullivan vs. ERSRI*, which involved a Newport teacher who had been laid off and thereafter returned on part-time status. Director Karpinski and the Hearing Officer had recommended that he not be permitted to buy the partial layoff. The Board affirmed the decision and the case went to Superior Court, which reversed the Board's decision. Subsequently, the Board authorized a petition for issuance of a writ of certiorari to the Rhode Island Supreme Court, which denied the petition. Attorney Robinson said the Supreme Court declined review the substantive merits of the matter. Consequently, the Superior Court's decision will stand.

VIII. Committee Reports

Disability Subcommittee: *No report this month.*

Rules and Regulations Subcommittee:

Chairman John Maguire thanked the Rules and Regulations Subcommittee members who met on May 17, 2012 and this morning at 8:30 a.m. and acknowledged those in attendance; namely, Deputy Treasurer Attorney Mark Dingley, H. Carl Heintzelman, Thomas Mullaney, John J. Meehan, Legal Counsel Gayle Mambro-Martin, Executive Director Frank J. Karpinski, and Board Counsel Michael P. Robinson.

Chairman Maguire said the Rules and Regulations Subcommittee first met on Thursday, May 17, 2012 to consider the following:

- Three proposed regulations for clarification of certain provisions related to the Rhode Island Retirement Security Act of 2011 (RIRSA).
- A proposed regulation addressing indemnification of Board members.
- A discussion and potential recommendation to promulgate draft rules regarding the purchase of service credits.

Regarding the proposed regulations for clarification of certain provisions related to RIRSA, Chairman Maguire said the language in RIGL §16-16-12(c)(iv) differs slightly from language in RIGL §36-10-9(c)(iv) and RIGL §45-21-16(ii)(D). He told the Board that the rule is regarding the reference made to *this section* found in the first sentence of

RIGL §16-16-12 (c)(iv). The Subcommittee voted to recommend to the full board for approval that the reference made to *this section* shall be interpreted to mean section 16-16-12 (c).

Chairman Maguire then described the second rule and said the application of §45-21.2-22(a) and 45-21.2-22.1(a) provide that benefits under these sections are for members retiring *on or before* June 30, 2012. The Subcommittee voted to recommend to the full board for approval that the phrase retiring on or before June 30, 2012 be interpreted to mean members *eligible to retire on or before* June 30, 2012.

Chairman Maguire then updated the Board on the final proposed rule regarding RIRSA. He said the Subcommittee considered a regulation regarding the application §36-8-1(5)(b) concerning the interpretation of the definition for average compensation, (the 10 Year FAS issue). After initial review, the Subcommittee asked Attorney Robinson to make some revisions. He said the Subcommittee met at 8:30 am this morning and considered the revised regulation. To ensure fairness and consistency in its interpretation and administration of the retirement systems, the Subcommittee approved the revised regulation and voted to recommend it to the full board for approval. It addresses consistency with the expressed intention of RIRSA in that the interpretation is to administer R.I.G.L. §36-8-1(5)(b) consistently with R.I.G.L. §§45-21-2(8) and 45-21.2-2, and in no event shall it deem a member's average compensation to be less than his or her average compensation determined as of June 30, 2012.

Chairman Maguire said the Subcommittee then discussed development of a regulation addressing indemnification of Board members. He said the Subcommittee directed Attorney Robinson and Director Karpinski to develop a draft regulation, for consideration by the Subcommittee, to initially pay all litigation costs but cease at the point of conviction (if applicable).

Lastly, Chairman Maguire said the Subcommittee discussed a recommendation to promulgate draft rules regarding the purchase of service credits and said the Subcommittee postponed approval.

Regarding the Subcommittee meeting at 8:30 am this morning, Chairman Maguire said the Subcommittee considered a regulation for designation of "Pay-Go" Judges contributions as 414(h)(2) contributions and adoption of a trust agreement effective July 1, 2012. He said the Subcommittee recommended approval to the full Board for consideration.

Chairman Maguire then summarized the Subcommittee's recommendations for approval of proposed regulation No.14 and revised 14.2 for certain provisions related to the Rhode Island Retirement Security Act of 2011, approval of proposed regulation No.15 for the designation of "Pay-Go" Judges Contributions as 414(h)(2) contributions and adoption of the related trust agreement effective July 1, 2012 and that the Executive Director be authorized to begin the formal promulgation process.

On a motion by Mr. Roger P. Boudreau and seconded by Mr. Thomas Mullaney it was unanimously

VOTED: To approve and adopt the Subcommittee's report and recommendations as stated.

IX. New Business

None this month

X. Adjournment

There being no other business to come before the Board, on a motion by Roger P. Boudreau and seconded by Thomas A. Mullaney the meeting adjourned at 10:15 a.m.

Respectfully submitted,

Frank J. Karpinski
Executive Director